

FORM RF-100
Arizona Department of Real Estate
Recovery Fund Information
A.R.S. §§32-2186

THE FOLLOWING INFORMATION IS VALID FOR CLAIMS FILED ON OR BEFORE AUGUST 21, 2002.
NEW STATUTES GO INTO EFFECT ON AUGUST 22, 2002, FOR ANY CLAIMS FILED ON OR AFTER THAT DATE.

See House Bill HB2008 at <http://www.azleg.state.az.us/legtext/45leg/2r/laws/0058.htm>

PREFATORY NOTE

Please read this document carefully. It contains important information concerning your Recovery Fund claim, but is only a general guide. Any documents you file in court must comply with all the applicable rules of civil procedure and local rules of practice. The fact that an attorney may not represent you does not relieve you of this overriding responsibility. Compliance with those rules is required.

Department staff are prohibited from giving legal advice, including:

- offering interpretations of statutes or rules;
- recommending a course of action;
- predicting a decision on any given matter; or
- interpreting the meaning or effect of any court order, judgment or other document.

For complete laws ("statutes"), refer to Title 32, Chapter 20, Article 5 (A.R.S. §§32-2186 through 32-2193.02).

I. GENERAL INFORMATION

The Real Estate Recovery Fund ("the Fund") is available for reimbursement of actual and direct out-of-pocket losses up to \$30,000 for each transaction and \$90,000 for each individual real estate or cemetery licensee ("licensee") where there is an uncollected judgment against a licensee for conduct that violates statutory duties ("judgment").

Within 45 days of commencing a lawsuit that may result in collection from the Fund, a victim must give notice that a potential claim exists by certified mail to the Recovery Fund Administrator at the Phoenix Office of the Department. Payment is made from the Fund only after claimants have sued all potentially liable persons but are unable to recover their losses. The victim has the burden of demonstrating the net amount of recoverable losses and all collection efforts undertaken. Victims must also prove they have satisfied statutory requirements by competent evidence. They cannot rely on conclusory statements contained in affidavits or arguments of counsel. If a claim is paid from the Fund, the license is automatically terminated. Submitting a complaint to Investigations, Licensing or any other section of the Department *does not* constitute notice or an application for payment from the Recovery Fund.

II. NAMING DEFENDANTS

A victim must sue all parties potentially liable for damages under Arizona Revised Statutes and/or the Commissioner's Rules. That may or may not include a licensee's employing entity (a licensed company employing the licensee) and/or

designated broker (a licensed person responsible for another broker or salesperson's conduct). If an entity and/or designated broker is not named, sufficient explanation and evaluation of that entity or broker's liability must be given.

Arizona is a community property state; therefore, a potential applicant must determine whether the loss is based on a community debt. If you do not name a defendant's spouse, either specifically or as a fictitious person (i.e., "Jane Doe" or "John Doe"), sufficient explanation must be given.

III. NET RECOVERABLE LOSSES

Recoverable losses are actual and direct out-of-pocket losses that resulted from the real estate transaction and have been awarded by the court in a final judgment. They include losses resulting from or caused by one or more of the following:

- Misappropriated earnest money deposit or down payment on a house
- Misappropriated security deposit, net rent income or money fraudulently withheld for repairs, utilities or mortgage payments on a property managed by a licensee
- Some repair or construction costs required for damages or defects when a licensee has materially misrepresented the condition of a property
- Losses caused by lack of security for a transaction when the licensee has actively misrepresented the security or financial condition
- Losses resulting from fraudulent conduct by a licensee while acting as a principal in a real estate transaction

"Net recoverable losses" are reduced by reimbursements, compensation, offsets and pecuniary benefits received from any source. (Pecuniary benefits include tax benefits, amounts received from bonding or insurance companies, in- or out-of-court settlements with any defendant, and anything you receive from any judgment debtor in satisfaction of the judgment).

IV. UNCOVERED LOSSES

The Fund is not liable for damages or losses resulting from or caused by any of the following, even if such losses are awarded in the judgment. They are based on either specific statutes, or have been determined by case law:

- Lost profits and speculative losses
- Losses on property located outside Arizona
- Investment in notes, mortgages, limited partnerships or other securities, regardless of whether it is secured by real

property

- Repair costs for defects when purchaser was aware of the defect
- Punitive damages or post-judgment interest
- Damages from natural causes, vandalism, or tenant conduct or neglect
- Undocumented transactions or losses
- Money spent on lodging, meals, travel, photocopies or long-distance phone calls
- Commissions earned or payable in a transaction
- Losses exceeding out-of-pocket losses
- Losses by licensees, their spouses, business associates and related entities

V. DOCUMENTATION

Required documentation includes any information relevant to the real estate transaction, wrongdoing by the licensee, recoverable losses, collection efforts and offsets or pecuniary benefits in order to evaluate your claim. Depending on your transaction, documentation of net recoverable losses could include any of the following items:

- Listing agreements and purchase contracts
- Property management and lease agreements
- Escrow instructions, addendums and settlement statements
- Accountings
- Payments received from insurers or other defendants
- Canceled checks from your or any other bank account
- Tax returns and a statement of whether the loss is deductible
- Correspondence with the licensee
- Civil complaint, settlement agreements, stipulations and orders, or notices dismissing any party from liability
- Judgment(s) against all parties, recorded pursuant to statute
- Writs of execution and garnishment, returns thereon, and transcripts and documents from debtor exams
- Bankruptcy pleadings and orders
- Proof of actual and direct out-of-pocket losses

If the Department does not receive documentation promptly, consideration of your claim may be delayed.

VI. COLLECTION EFFORTS

You must make all reasonable efforts to collect the debt from all parties responsible for your losses by exhausting all available remedies, and completing all reasonable efforts to collect from all parties. In your application for payment from the Fund, you will be required to show, among other things, that you have recorded your judgment, obtained an unsatisfied writ of execution, conducted a debtor's examination, and made all reasonable searches and efforts to satisfy the judgment from the judgment debtors' property. Collection requirements are fully explained in the statutes. One or more of those requirements may be waived as to a particular judgment debtor if that debtor files bankruptcy.

VII. BANKRUPTCY

A defendant/licensee in your case may have already filed for bankruptcy, and you or your attorney may have filed an adversary proceeding for an order of nondischargeability from the bankruptcy court.

If you receive a notice or otherwise find out that any potentially liable party is involved in a bankruptcy, you should promptly notify the Administrator. You or your attorney must file a "Proof of Claim" if you wish to preserve your rights in bankruptcy court, and an order of nondischargeability is the only way you will be able to pursue your civil lawsuit for a money judgment against the licensee. (The bankruptcy court may determine that there are assets from which creditors may be paid, and you could receive a portion of the debt owed.)

You must provide certain bankruptcy documents to the Department with or before you file your application for payment from the Fund:

- Notice of first meeting of creditors
- Proof of claim filed by you
- Adversary complaint in bankruptcy filed by you, and any order entered therein
- Order lifting automatic bankruptcy stay
- Order of dismissal or discharge

VIII. APPLICATION FOR PAYMENT

If you can successfully show that you have an uncollectible money judgment for recoverable losses, you may file an application in superior court for an Order Directing Payment from the Recovery Fund of your recoverable losses. The application must demonstrate in detail how you have complied with the steps outlined in A.R.S. §32-2188(D)(1)-(10), and must include the following:

- Canceled checks from your or any other bank account
- Avowal that you are not the debtor's spouse or the personal representative of the spouse
- Avowal that you have sued any bonding company, if applicable
- Argument in support of a waiver of notice, if required
- Itemized list with description and amount of each loss
- Calculations used to arrive at the dollar amount of each recoverable loss
- Completion of statutory collection efforts required
- Itemized payments received from insurers or any defendant
- Every offset or pecuniary benefit received or claimed
- Net amount of recoverable losses requested from the Fund
- Compliance with all other statutory requirements

If a judgment debtor filed for bankruptcy, be sure to include the information outlined in the last paragraph of Section VII in your application.

The Department will consider whether you have complied with Rule 5(C)(2), Arizona Rules of Civil Procedure, regarding service on a defendant for enforcement of a judgment, if applicable. See Section II.

The Commissioner and licensees each have 35 days to file a written response to any application. A payment order cannot be entered until this time has expired. The Department will file a response stating whether the claim appears to comply with statutory requirements. Uncovered claims will be opposed.

The court may enter an order directing payment from the Fund without a hearing if no objections are filed and if the claimant and Department reach an agreement on the amount of out-of-

pocket losses. A hearing will be scheduled if the Department or the licensee opposes the application. If the court awards payment, the applicant must sign an assignment that allows the Department to pursue collection against the judgment debtors and requires the claimant to turn over to the Department anything the claimant may receive from any source.

Be sure to refer to the statutes cited in the *Prefatory Note* for complete information regarding applications to the Recovery Fund.

IX. GOALS OF THE DEPARTMENT

The goal of the Department is to process as quickly and easily as possible all legitimate claims that satisfy statutory requirements. Although the Department cannot give anyone specific legal advice, we will do our best to provide the public with the information and resources needed to make legitimate claims.

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